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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections 12 and 19
of the Cable Television Consumer
Protection and Competition
Act of 1992

Development of Competition and
Diversity in Video Programming
Distribution and Carriage

MM Docket No. 92-265

COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA")
submits these Comments in response to the Notice of Proposed Rule
Making, ("NPRM"), released by the Commission in this docket on
December 24, 1992.

In this NPRM, the Commission is seeking comments on rules to
implement Sections 12 and 19 of the Cable Television Consumer
Protection and Competition Act of 1992 (the "Act"). Section 12
(47 U.S.C. § 615) requires that the Commission adopt regulations
governing program carriage agreements between cable operators and
video programmers. Section 19 (47 U.S.C. § 628) of the Act makes
it unlawful for a cable operator, a satellite cable programming
vendor in which a cable operator has an attributable interest, or
a satellite broadcast programming vendor to engage in unfair
competition or unfair or deceptive acts or practices intended to
hinder significantly or prevent any multichannel video
programming distributor from providing satellite cable
programming or satellite broadcast programming to subscribers or
consumers.

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NTCA is a national association of approximately 500 small and rural local exchange carriers ("LECs") providing telecommunications services to interexchange carriers ("IXCs") and subscribers across rural America.

Some NTCA members will be affected by the Commission's regulations because they purchase programming for distribution to their cable, Multichannel Multipoint Distribution Systems ("MMDS") or home satellite dish ("HSD") subscribers. Approximately 150 of NTCA's members operate small cable television systems in their telephone service area. Most of them provide service under the rural exemption in 47 C.F.R. § 63.58. Some NTCA members are also engaged in or are applying for licenses to provide MMDS; others provide various packages of satellite-delivered programming to HSD subscribers. Approximately 100 of NTCA's members have also contracted to provide Direct Broadcast Satellite through the National Rural Telecommunications Cooperative ("NRTC").

NTCA's comments in this proceeding address its concern that the Commission promulgate rules which effectuate the congressional intent that neither non-affiliated small cable companies nor non-cable video programming distributors bear the brunt of unfair competition, unfair or deceptive trade practices or discrimination in the price, terms, and conditions of programming sales. The congressional directive with respect to regulations the Commission is required to promulgate to implement

Section 19 is clearly articulated in the legislative history as follows:

In adopting rules under this section, the conferees expect the Commission to address and resolve the problems of unreasonable cable industry practices, including restricting the availability of programming and charging discriminatory prices to non-cable technologies. The conferees intend that the Commission shall encourage arrangements which promote the development of new technologies providing facilities-based competition to cable and extending programming to areas not served by cable.

H. Rep. No. 862, 102d Cong., 2d Sess. 93 (1992).

One of the troublesome areas the NPRM discusses is that portion of Section 628 which allows the Commission to enact rules that prohibit discrimination but allow the Commission to take account of certain factors that could cause or justify cost differences. NTCA is concerned that consideration of these factors could undermine the prohibition against discrimination and thwart the Commission's enforcement efforts.

These factors include cost differences in the creation, sale or delivery of programming, differences in economies of scale, financial stability, creditworthiness, technical quality and other factors. NPRM, ¶ 17. The Commission seeks comments on specific options to develop regulations that take the differences into account. NTCA has no specific comments on these options at this time but urges the Commission to abide by the legislative intent and refrain from adopting rules that would allow violators to escape through loopholes.

One of NTCA's concerns is that the rules are designed to correct prohibited discriminatory pricing practices of the type complained of by the NRTC in MM Docket No. 89-600, Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service and in Gen. Docket No. 89-88, Inquiry Into the Existence of Discrimination in the Provision of Superstation and Network Station Programming. In those proceedings, NRTC stated that it has been required to pay satellite cable and broadcast programmers, on average, 460% more than small cable companies are required to pay for identical programming. NRTC also stated that the pricing disparity between NRTC and these companies for NRTC's 18 channel Basic Plus Service has ranged from a low of 233% to a high of 708%. It would be ironic and unfortunate if the Commission's options for determining whether discriminatory pricing exists allowed the continuation of these practices. The Commission should obviously not adopt an option or a combination of options which together eviscerate the statutory mandate prohibiting discrimination. That mandate is intended to assure that consumers receive the benefit of a variety of video programming services. Consumers in rural areas, in particular, will not receive this benefit if affiliated programmers are allowed to discriminate in a way that makes access either unfairly or prohibitively expensive.

The Commission is well aware that economies of scale in the provision of cable often makes that technology infeasible in sparsely populated and remote areas. In these areas HSDs will

likely be (DBS when it is deployed) the consumer's only alternative for multichannel video programming. It is expected that MMDS systems will also be deployed in these areas after the Commission completes work on data organization and awards additional licenses for the service. The Commission's rules should not allow legitimate difference in cost to be expanded to recreate the level of discrimination documented by NRTC.


CONCLUSION

For the above stated reasons, NTCA urges the Commission to adopt rules which incorporate the congressional intent to make available a wide variety of programming to consumers, particularly those in rural areas not served by cable.

Respectfully submitted,

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ASSOCIATION

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January 25, 1993

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in MM Docket No. 92-265 was served on this 25th day of January 1993 by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list.

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